SISA Update October 2017

Robin Shaw

Manager, Self Insurers of SA

Revised Code of Conduct

- May need further changes when Labour Hire Licencing Bill is passed

- Actuarial Guidelines published 16/10/17 with table of changes from the former Annexure D of the Code

- Revised Actuarial Guidelines were done in consultation with SI actuaries

- Does not appear to confer additional cost or time

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Other changes being planned

- Major upgrade of EDI technology to remove batch & other types of errors and greatly reduce time demands – RTWSA consulting vendors

- Improved data & reporting capabilities to give SI users the ability to directly access data, reports etc

- No further advice on progress of these

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Labour Hire Licencing Bill 2017

- Passed HA, currently in 2nd reading in LC

- Major concern is about who will be captured as 'labour hire' – contractors in particular

- Bill is non-specific and will rely on regulations to exempt some arrangements – group training schemes, apprenticeship schemes etc

- There is a range of unusual arrangements, especially in regional areas – be wary of unintended consequences

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Labour Hire Licencing Bill 2017

- The definition of a 'fit & proper person' includes not being insolvent or not having been a director of a business that has been wound up in the last 6 months

- Should help to control phoenixing

- Penalties for being, or contracting with unlicenced hirers - $140,000 or 5 years prison for a natural person, $400,000 for bodies corporate

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Labour Hire Licencing Bill 2017

- SIs will probably need to do due diligence by:
  - Requiring licences to be produced when contracting for labour
  - Verifying with OBCS that the licence is valid
  - Verifying that the LH workers who turn up are *directly* employed by a licence holder
- Potential to create more problems than it solves – high risk of unintended consequences & fraud – eg fake licences (as seen with HRW licences)
- SISA will review Act & regulations in their final form & will advise members

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Other Bills

- *Work Health and Safety (Representative Assistance) Amendment Bill 2017*
    - Passed LC, now in 2nd reading in HA
    - Bill was amended to remove notice requirements – HSRs will be able to call on any person without notice
- *Work Health and Safety (Notification of Next of Kin) Amendment Bill 2017*
    - Despite feedback from SISA and many others, Adrian Pederick tabled a slightly amended version
    - Still in 2nd reading in HA; may not be progressed

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WHS round-up

- Not a lot of fresh news

- Changes at SWSA:
  - Chris McKie (Chief Inspector) resigned – probably part of the nRAH prosecution fallout
  - Phillip Boyle (director of education arm) resigned to return to private sector
  - New Investigations Director – Deb McLean – also result of nRAH investigation by DPP

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Investigation of SWSA by DPP

- Report not made public

- 18 recommendations – all accepted, included:

  - immediately train all investigation personnel in the WHS legislative framework and what is required to prove offences under the Act, including the powers to obtain information and require the production of documents or answers to questions under sections 155 and 171

  - develop a training framework that identifies training requirements (and the people who should be trained) for investigating and prosecuting breaches of the WHS laws

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Investigation of SWSA by DPP

- Recommendations (cont)
  - review current procedures and practices for identifying which incidents will be the subject of an initial response
  - implement a rigorous case management and review regime for investigations from the point of notification to conclusion, which involves inspectors, investigators, managers and legal advisers

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Investigation of SWSA by DPP

- Recommendations (cont)
  - explore ways to identify and select appropriate experts to contribute to investigations
  - review current guidelines for accepting applications to enter WHS enforceable undertakings in lieu of prosecution.
- Full list of recommendations is on SWSA website under 'News'

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Investigation of SWSA by DPP

- SWSA response:

- SWSA developing an investigative training program with Charles Sturt University's Graduate School of Policing

- Appointed a detective chief inspector of SA Police to the new SafeWork SA role of Investigations Director

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Recent key SAET cases

- Key cases re WPI still on appeal
- *Preedy, Martin* & *Mitchell* principles now being applied in WPI aggregation matters:
  - *White* SAET 120 6/10/17 – 27% WPI increased to 46% – another case of WPI arising from opiate use
  - *Mastromihailis* SAET 113 27/9/17 - 27% WPI increased to 38%
- *Kaye* [2017] SAET 109 – dealt with referrals to IMA

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Recent key cases (cont)

- *Davill v Return to Work SA* [2017] SAET 125 – issue of costs when a worker withdraws a s.18(3) application – held that RTWSA (or a SI) pays costs

- *Graham v Return to Work SA* [2017] SAET 124 – deals with applications for stays of SAET orders on serious injury/WPI assessments – some similarity to *Preedy*

- *Figallo v Return to Work SA* [2017] SAET 121 – dentures are prostheses

- *Prentice v Woolworths (SA) Pty Ltd* [2017] SAET 108 – work held to be a significant contributing cause of arthritis

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RTWA - state of play

- Case law on combining WPI assessments probably resulting in upward pressure on serious injury claim numbers

- RTWSA is appealing some of the more critical decisions – and applying for stays of SAET orders pending appeals, with mixed results

- SAET reports large numbers of s.18(3) applications but few seem to go through to judgement

- Case law on future surgery still unclear

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Congratulations to the 2017 SISA Award winners

- Self Insured Employer of the Year - sponsor KJK LEGAL. Joint winners: Pernod Ricard Winemakers and RAA

- Best Work Health & Safety Solution - sponsor MLCOA. Joint winners: Broadspectrum and DPTI

- Outstanding Employee Contribution to Work Health & Safety or Return To Work - sponsor: Finlaysons Lawyers. Winner - Matthew Brodie, DPTI

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Congratulations to the 2017 SISA Award winners

- Outstanding Personal Achievement in Return to Work - sponsor Gallagher Bassett. Winner - Brevet Sgt Robert Alderson SA Police

- Service Provider of the Year – sponsor ReturnToWork SA. Winner - People Vision

- Read about the winners on the SISA website

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Questions?